STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CELINA M. LANDIN,

Defendant-Appellant.

UNPUBLISHED
March 29, 2002

No. 229634
Wayne Circuit Court
LC No. 99-002930

Before: Hood, P.J., and Gage and Murray, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial convictions of felonious assault, MCL 750.82; discharge of a firearm while intentionally aimed without malice, MCL 750.234; malicious destruction of property over $100, MCL 750.377a; intentional discharge of a firearm from a motor vehicle, MCL 750.234a; and felony-firearm, MCL 750.227b. Defendant was sentenced to concurrent sentences of one to four years' imprisonment for each of the convictions except the felony-firearm, for which a two-year consecutive sentence was imposed. We affirm.

Defendant first argues that she was denied a fair trial when the trial court failed to grant her motion for a mistrial following the prosecution's alleged violation of the trial court's order excluding "propensity evidence" or prior bad acts under MRE 404(b). We disagree. "We review a trial court's decision to deny a motion for a mistrial for an abuse of discretion." *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001). "The standard for reviewing a decision for abuse of discretion is narrow; the result must have been so violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or an exercise of passion or bias." *People v Torres (On Remand)*, 222 Mich App 411, 415; 564 NW2d 149 (1997). A mistrial should only be granted where the prejudicial effect of an error is impossible to cure in any other way. *People v Lumsden*, 168 Mich App 286, 299; 423 NW2d 645 (1988). Moreover, absent an affirmative showing of prejudice to a defendant's rights that impairs his ability to receive a fair trial, a trial court's decision whether to grant a mistrial will not be overturned on appeal. *People v Holly*, 129 Mich App 405, 415; 341 NW2d 823 (1983).

Isolated and inadvertent references to a defendant's prior criminal acts do not merit reversal unless deliberately repeated with the intent to inform the jury that the defendant has committed other acts. *People v Wallen*, 47 Mich App 612, 613; 209 NW2d 608 (1973). In the present case, no error occurred because there was no reference to any prior bad acts by defendant or other propensity evidence. Rather, the prosecutor made only isolated references to a prior

"feud," which is a nondescript reference that reveals nothing about defendant committing any prior bad acts. Further, the limited references and question by the prosecution did no more than supply a context to the incident at issue. Evidence of other events is admissible when part of the "complete story" of events. *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978).

Furthermore, even if we were to conclude that an error occurred, it would not require reversal of defendant's convictions. Any error or possible prejudice created by the prosecutor's references to a "feud" was cured by the trial court's instructions to the jury. The jury is presumed to follow the trial court's instructions. *Torres, supra* at 423. Accordingly, we find no showing of prejudice to defendant's rights, and therefore, the trial court did not abuse its discretion when it denied defendant's motion for a mistrial.

Next, defendant contends that the prosecution improperly impeached a non-alibi defense witness with his failure to come forward with exculpatory information prior to trial. We disagree. Because defendant did not object to this alleged error at trial, this issue is reviewed for a plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

"A prosecutor may cross-examine a non-alibi defense witness regarding his failure to come forward prior to trial with the information testified to at trial if the information is of such a nature that the witness would have a natural tendency to come forward with it prior to trial." *People v Emery*, 150 Mich App 657, 666; 389 NW2d 472 (1986). In determining whether a witness has a natural tendency to come forward with the information, the *Emery* Court considered several factors, which include: (1) whether the witness and the defendant had a close relationship, making it reasonable to believe that the witness would have exerted some effort to provide police with information that would have exculpated the defendant; (2) whether the witness was present at the crime scene, and therefore, had personal knowledge of the events; (3) whether the witnesses presence implicated him in the wrongdoing; and (4) whether the witness did not have to take the initiative to talk to the police. *Id*. at 666-667.

In the present case, the witness testified that he was in the car with the victim on the night in question and that the shooting did not occur. The witness further testified that the victim asked him to go to the police station and say that defendant shot at them in the car, which the witness refused to do because it was a lie. If this were true, it would have tended to exonerate defendant on all the charges. In light of the foregoing factors, we find that this information was of such a nature that the witness would have had a natural tendency to present it prior to trial. First, the witness and defendant had a close relationship as the witness was dating defendant and at the time of trial, defendant was pregnant with the witness' child. Furthermore, the witness was present in the car with the victim when defendant allegedly shot at the victim. Finally, although the police did not have to take the initiative to speak with the witness, the witness went to the police station and gave a version of events that corroborated that of the other witnesses

and that contradicted his testimony at trial. Under these circumstances, we do not believe that any error occurred.

Affirmed.

/s/ Harold Hood
/s/ Hilda R. Gage
/s/ Christopher M. Murray